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Six Months After Upper Big Branch Mine Disaster, Republicans Still Obstructing Progress

Six months ago, on April 5th, 29 miners were killed by an immense explosion at the Upper Big Branch mine in West Virginia. They didn't have to die. Mine owners, government officials, and union safety experts have known how to prevent such explosions for decades. Some operators take the necessary steps to prevent such occurrences, but others are willing to put short-term profits above worker safety.

Massey Energy Company, owner of the doomed mine, falls into the latter category. In fact, the company has one of the worst safety records in the nation. In 2009, the mine Safety and Health Administration (MSHA) tried to fine Massey \$12.9 million, but the company appealed a stunning 75 percent of the violations, putting off payment indefinitely. Upper Big Branch alone was cited over 3,000 times since 1995, and received 53 new safety violations in March, including specific citation of the mine's ventilation system, meant to disperse potentially explosive methane gas. Frequent inspections did little to hinder the operator's unscrupulous practices, partly because the non-union workers feared retaliation if they expressed their concerns to inspectors.

Meanwhile, Massey's CEO, Don Blankenship, insists that the industry is capable of regulating itself. "Washington and state politicians have no idea how to improve miner safety," Blankenship declared at a 2009 anti-union rally. "The very idea that they care more about coal miner safety than we do is as silly as global warming." Since April, two more miners have died at Massey sites.

Massey isn't the only bad actor on the American scene. In a worldwide worker safety survey of 39 companies, provided by financial risk analysts at the RiskMetrics Group, Massey, Patriot Coal, Peabody and CONSOL all received a "CCC" rating, the worst possible outcome. No other surveyed company received such a low rating. This is partly accounted for by the fact that Appalachia's underground mining is riskier than the machine-dominated surface mining in the Western states. Even so, there is no excuse for the industry's sporadically inflated death toll in recent years. 44 miners have died so far this year, nearly matching 2006's grim high of 47.

According to Blankenship, the problem is government overreach, not company negligence. "The feeling of the industry is that we're regulated too much and not too little," Blankenship told Bloomberg T.V.'s Margaret Brennan in July, a day after the Robert C. Byrd Mine Safety Act passed the House Labor and Education Committee on a party line vote. In August, the West Virginia Coal Association's senior vice president, Chris Hamilton, indiscriminately blasted all government regulation in a pro-mountain top removal press release. "We plan to...call on lawmakers and administration officials to discontinue efforts to regulate the coal industry--and the hundreds of thousands of jobs it provides--out of business."

These hang-wringing comments echo the views that the industry and its allies have espoused for decades. "Rigid, inflexible, thoughtless regulation...can have a plainly detrimental effect on achieving a safe, efficient, and productive coal industry," Ralph Bailey, chairman of the Consolidation Coal Company, protested during the 1977 hearings to update the Coal Mine Safety and Health Act of 1969--the first meaningful piece of safety legislation. "It's the overregulation and enforcement of the Act as an end in itself that has caused the coal industry most of its problems..."

Lawmakers ignored Bailey's false warnings and passed the Federal Mine Safety and Health Act of 1977. During the 1980s and 1990s, the industry prospered and productivity increased.

Contrary to the contentions of Blankenship and his cohorts, Congress' fresh attempts to reform mine safety laws aren't anymore likely to disrupt the coal industry than the 1977 act did. And the laws badly need updating. The safety laws were last amended in 2006, in the wake of the Sago, West Virginia mine disaster, where 12 miners died in an explosion. The resultant MINER Act was almost purely reactive--providing for more oxygen reserves, fast response rescue teams--basically strengthening safety measures for workers after a disaster took place but establishing few preventive standards. Many experts agreed that stronger, preventative legislation was needed, but when Rep. George Miller (D-CA) tried in 2008, President Bush threatened to veto the legislation. The bill died in the Senate.

The Upper Big Branch tragedy renewed Congressional interest in mine safety. In response, Democratic lawmakers, led by Rep. Miller and Sen. Jay Rockefeller (D-WV), crafted the Byrd Act. The Act greatly expands whistleblower protections, granting all miners the "express right" to refuse to work in unsafe conditions and ensuring that miners receive full pay if their section of the mine is closed for safety reasons. To ensure government accountability in the event of an accident involving the death of three or more workers, the act mandates a panel of independent experts to review the actions of the operator and MSHA. Among many other much needed reforms, the act would give MSHA investigators subpoena power, update the agency's underused "pattern of violations" authority, and increase both criminal and civil penalties while requiring operators to pay their fines within 180 days, on pain of a shut down.

In an attempt to justify their opposition to the Byrd Act, business lobbies have latched onto one addendum to the bill, which expands some of the legislation's provisions to all private workplaces. (Proposed alterations include increased whistleblower rights and heightened criminal penalties.) Business groups, including the Chamber of Commerce and the National Association of

Manufacturers, have fiercely denounced this aspect of the Byrd Act. "The proposed changes will impose substantial costs on businesses--particularly small businesses--which are struggling to create and retain jobs," reads a list of objections issued by industry front-group Coalition for Workplace Safety.

The Republicans have gleefully adopted this excuse. Before voting against the House Labor Committee's version of the bill, ranking Republican John Kline (R-MN) complained: "[The Act will] drive up costs and litigation for employers all of which would make it more difficult to create jobs at a time when our economy needs them the most." On September 28, Sen. Rockefeller tried to bring the Miner Safety and Health Act to the floor for a vote, a move that requires unanimous consent from the Senate. Wyoming Republican Sen. Mike Enzi (R-WY) objected, accusing the Democrats of using the bill for partisan gain, and prevented the vote. (Wyoming produces around 40 percent of the nation's coal, and Enzi's largest donor for the years 2005-2010 is Foundation Coal, one of the largest operators in the country.)

In fact, numerous studies document that safety regulations don't result in the job killing apocalypse that business groups and their political allies always predict. A 2004 study commissioned by the Public Citizen Foundation shows that the cost of compliance with every environmental, safety, and health regulation studied have "never [risen] to the levels estimated by private sector industry". A 2005 report by OMB Watch lists numerous regulations, many concerning worker safety: industry objected to every one with dire predictions of job loss, skyrocketing costs, and business failure. In every case, their predictions were proven wrong.

All the rhetoric and excuses from Massey, the business lobbies, and Congressional Republicans are part of the game plan: Delay until November. The Byrd Act's chances look bleak if the Republicans win a majority in one or both chambers in November. Rockefeller told The Hill last week that the bill "has less of a chance [in 2011 because] there's going to be even more of the ideology factor plus the party discipline factor." If the bill survives, it is likely to be substantially weaker than the current iteration.

But activists aren't giving up the fight. "I don't think it's dead, and let's not forget what might happen in a session after Election Day," said Phil Smith, director of communications for the United Mine Workers, referring to the lame duck session after an election but before the next Congress opens.

If the Republicans and their industry allies are successful in sinking the Byrd Act, another option for reform won't present itself again soon, or at least until the next mine explodes.

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